*THE HONOURABLE SRI JUSTICE V.V.S.RAO

+WRIT PETITION NO.1071 OF 1994

%22-06-2004

PAGADALA RAMIREDDY AND OTHERS

..PETITIONERS

Vs.

$ COMMISSIONER OF LAND REVENUE,A.P., HYDERABAD AND OTHERS

..RESPONDENTS

!COUNSEL FOR PETITIONER: MR. S.LAKSHMA REDDY

^COUNSEL FOR RESPONDENTS: G.P.FOR REVENUE

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>HEAD NOTE:

?CASES REFERRED:

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE TWENTY SECOND DAY OF JUNE
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE V.V.S.RAO

-

WRIT PETITION NO : 1071 of 1994

Between:

Pagadala Ramireddy S/o.Venkat Reddy,R/o.Jakkipally Kusumanchi Mandal, Khammam Dist.

..... PETITIONER

AND

1 Commissioner of Land Revenue A.P, Hyderabad.
2 Dist Collector, Khammam.
3 Revenue Divisional Officer, Khammam.
4 Mandal Revenue Officer, Kusumanchi Mandal Khammam Dist.

....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ, order or direction more particularly one in the nature of Writ of Mandamus declaring the action of the impugned action of the nature of imposing 10 times penalty levied during 1396 F (1986-87) on the ground that the petitioner have not raised sugar cane during the year 1986-87 and supplied the same to the factory established under Sugar cane control order as totally arbitrary, illegal and without jurisdiction and set aside the same and to pass such other order or orders.

Counsel for the Petitioner: MR.S.LAKSHMA REDDY

Counsel for the Respondents: G.P. for Revenue

The Court Made the Following :

ORDER:

The petitioner is President of Jakkepalli (Paleru Ayacut) Ryots Association in Khammam District. He is aggrieved by the action of the respondents in issuing an order of distraint under Section 8 of the Andhra Pradesh Revenue Recovery Act, 1864 to the petitioner as well as other ryots demanding specified sum towards penalty for non-cultivation of sugarcane crop. The action is challenged on the ground that such levy is without jurisdiction in contravention of law.

A sugar factory was established at Paleru in the name and style of 'Paleru Cooperative Sugar Factory' in the year 1978. At that time, the petitioner and others were cultivating various crops. However, after the factory was established during the year
1978-79, they raised sugarcane crop and supplied the same to sugar factory. According to the petitioners, in subsequent years, sugarcane was refused by the factory and therefore they stopped growing sugarcane crop and started growing paddy crop. During the year 1986-87, the Revenue Divisional Officer purporting to act on the instructions of the Joint Collector directed to collect penalty at the rate of ten times over and above the water levy alleging that the petitioners resorted to growing other crops in contravention of the orders permitting Ayacut under Paleru Reservoir. Assailing the action, the writ petition is filed.

In the affidavit accompanying the writ petition, it is stated that initially they approached the first respondent, who by proceedings dated 05.07.1993 stayed the collection of penalty. But, subsequently the fourth respondent visited the village and informed the petitioner and others that in view of the vacation of the interim order passed by the first respondent, they have to pay the amounts of penalty. The petitioners contend that the respondents have no jurisdiction either under Sugarcane Control Order, 1966 or under the A.P. Water Tax Act, 1988 to impose penalty much less ten times against any sugarcane grower. They also contend that no notice was issued to the petitioner and others before levying penalty and that the sugarcane factory in Paleru refused to accept the sugarcane supplied by the petitioner and others, they resorted to growing other wet crops.

The Assistant Secretary in the Office of the first respondent has filed counter affidavit on behalf of the respondents. It is stated that Paleru Reservoir is a medium irrigation project designed for the irrigation of sixteen thousand acres. During 1975, water from Nagarjunasagar left canal was released in the Reservoir so as to take water for the Ayacut in the erstwhile Taluks Madira and Khammam through left canal excavated from Paleru project. Paleru Reservoir has thus become a balancing reservoir. In view of the irrigation potential, a cooperative sugar factory was constructed at Rajeswarapuram, in which all the ryots having lands under Paleru

project are the shareholders.

After establishment of the sugar factory, the use of water from Paleru Reservoir was restricted only to sugarcane cultivation. As the petitioner and others did not cultivate sugercane, the Jamabandi Officer imposed penalty for irregular irrigation by invoking the provisions of Section 67 of A.P. (Telangana Area) Irrigation Act, 1357-Fasli and the Rules issued vide notification G.O.Ms.1131 dated 20.11.1967. The writ petition is also opposed on the ground that the petitioners have any effective alternative remedy by way of Appeal under Section 158 of A.P. (Telangana Area) Land Revenue Act, 1317-Fasli. It is also stated that the lands were notified in the District Gazette dated 30.12.1977 for sugarcane cultivation and any unauthorized use of water for irrigation has to be penalised.

The learned counsel for the petitioner Sri S.Lakshma Reddy has reiterated the submissions raised in the affidavit accompanying the writ petition. The learned Assistant Government Pleader for Revenue (General) Sri Srinivas has placed before me the District Gazette Notification in support of the contention that the lands in Khammam Taluk were notified under sugarcane cultivation and therefore any cultivation of other crops has to be penalised. He placed reliance of Sections 25 and 34 of A.P.Irrigation Utilisation And Command Area Development Act, 1984 (for brevity, the Act). He would submit that when irrigation facilities are provided by the State for raising such kind of crops, any contravention would attract Section 24 and it is competent for the respondents to impose penalties.

The only point that arises for consideration having regard to the rival submissions is whether the respondents do not have power to impose penalty on the petitioner and others for not raising sugercane under Paleru Reservoir Ayakat?

The A.P. Irrigation Utilisation And Command Area Development Act, 1984 is in pith and substance. The enactment to provide for accelerated increase in agriculture and allied production in the State through a programme of comprehensive and systematic development on scientific and modern lines of command areas, comprising measures for optimum use of lands and water, to prevent land erosion and water logging. The Act also intends to take steps for improvement of soil fertility and regulation of cropping pattern and for proper utilization of water to ensure maximum benefit to the cultivators under command area. As per Subsection (2) of Section 1, the Act extends to whole of Andhra Pradesh but as per Subsection (3) of Section 1, all the provisions of the Act shall be deemed to have come into force on 14.01.1984 in respect of four major projects, namely, Nagarjunasagar Project Left Canal, Nagarjunasagar Project Right Canal, Sriramsagar Project and Tungabhadra Project. In respect of other cases, the provisions of the Act shall come into force on such date as the Government may by notification appoint. No material is placed before this Court by the learned Assistant Government Pleader to show that the Act has any application to the Ayacut under Paleru Reservoir, which is admittedly, (as stated in the counter affidavit) is a medium irrigation project. The mere fact that it is being used as a balancing reservoir to Nagarjunasagar Project Ayacut is of no significance because Paleru Reservoir is treated as an independent medium irrigation system. In the absence of notification

under Subsection (3) of Section 1 of the Act, the Act cannot be said to have any application to the Ayacut Area under Paleru Reservoir.

The submission of the learned Assistant Government Pleader that Sections 25 and 26 of the Act prohibit cultivation of wet crops other than the sugercane, and therefore, penalties can be imposed under Section 34 is also misconceived. Sections 25 and 26 read us under:

25. Classification of lands for raising different crops according to availability of water:- Subject to such directions as may be issued from time to time by the Government, the District Collector, may in any year, having regard to the quantity of water available in any irrigation system within his jurisdiction, classify, by an order, within such time and in such manner as may be prescribed, lands under the said irrigation system for the purpose of raising such kind of crops on each class of land as may be specified in the order, and regulate the supply of water for irrigation accordingly.

26. Power to prohibit growing of certain kinds of crops and to regulate the period of sowing and duration, of crops:-

(1) Whenever the Government are satisfied that for the better cultivation of land and the optimum utilization of water resources of an irrigation system or for accelerated land development or for any other reasons, it is expedient in public interest to regulate the cropping pattern the period of sowing and the duration of crop, they may, by notification, make a declaration to that effect:

Provided that such person may grow any crop other than the crop prohibited under this section with the utilization of water from his own source subject to such conditions and restrictions as may be prescribed.

(2) On the making of a declaration under sub-section (1), the Director of Agriculture may specify by notification published in such manner as may be prescribed, the kinds of crops that shall not be grown on any land under such irrigation system and the periods of sowing and duration in respect of non-prohibited crops thereof.

(3) On the publication of a notification under sub-section (2), no person shall grow any such crop as is prohibited by the notification on any land under such irrigation system and no person shall sow or plant any other crop at any period or allow such crop to remain beyond the duration specified in respect thereof in such notification.

A plain reading of Section 25 of the Act would reveal that it is within the competence of the District Collector to classify the lands under the irrigation system for raising of such kind of crops as may be specified having regard to the quantity of water available in the irrigation system. This does not contain any penal provision. Section 26 of the Act empowers the State Government to prohibit raising of a crop or sowing or to regulate the cropping pattern with reference to the period of sowing and duration of crop having regard to the better cultivation of land and optimum utilization of water resources of an irrigation system. Proviso to Subsection (1) of Section 26 enables to a person to grow any other crop other than the crop, which is prohibited. Subsection (2) of Section 26 of the Act empowers the Director of Agriculture to specify by notification published, the kinds of crops that shall not be grown on any land under an irrigation system and Subsection (3) of Section 26 of the Act prohibits any person from raising any crop on publication of notification under subsection (2).

No notification is issued by the Government under Section 26(1) or by the Director of Agriculture. Subsection (2) of Section 26 of the Act is placed before this Court and therefore it cannot be assumed that the petitioner and others were prohibited from raising paddy crop or other wet crops. Further, no notification permitting the growing of sugercane is placed before this Court to countenance the submission. In any view of the matter, Section 34 of the Act does not empower the respondents if a ryot used the water for growing wet crop. Reliance is placed by the learned Assistant Government Pleader under Clause (g) of Subsection (1) of Section 34 of the Act is misconceived. When the respondents admit that the petitioner's lands were brought under Ayacut even prior to establishment of Paleru Cooperative Sugar Factory, the use of water under irrigation system cannot be branded as unauthorized. Therefore, I must hold that the respondents have no power or authority to impose penalty on the petitioner and others.

In view of the finding as above, the writ petition succeeds and is accordingly allowed with costs.

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(V.V.S.RAO,J)

22.06.2004.

Note:LR copy be marked

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That Rule Nisi has been made absolute as above.

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice on this Tuesday the twenty second day of Two thousand and four.

ASSISTANT REGISTRAR

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SECTION OFFICER

To

1 Commissioner of Land Revenue A.P, Hyderabad.
2 Dist Collector, Khammam.
3 Revenue Divisional Officer, Khammam.
4 Mandal Revenue Officer, Kusumanchi Mandal Khammam Dist.

5 2 CCs to G.P. for Revenue, High Court Buildings, Hyderabad. (OUT)

6 2CD copies.